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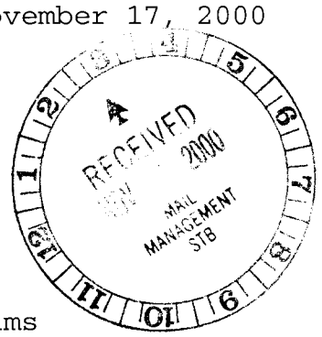




BY HAND DELIVERY

Honorable Vernon L. Williams
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

Re: Ex Parte No. 582 (Sub-No. 1),
Major Rail Consolidation Procedures

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Joint Comments of Subscribing Coal Shippers. Also enclosed is a 3.5-inch diskette containing the text of the Joint Reply Comments in WordPerfect format.

Please acknowledge receipt of the enclosed by stamping and returning to our messenger the enclosed duplicate of this letter.

Sincerely,

John H. LeSeur
An Attorney for Subscribing
Coal Shippers

JHL:cef
Enclosures

cc: Parties of Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

| | | |
|---|---|---|
| MAJOR RAIL CONSOLIDATION PROCEDURES | ) | Ex Parte No. 582 (Sub-No. 1) |

**JOINT COMMENTS OF SUBSCRIBING COAL SHIPPERS:
WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
ALLIANT ENERGY CORPORATION,
CITY OF GRAND ISLAND, NEBRASKA,
CITY UTILITIES OF SPRINGFIELD, MISSOURI,
LAFAYETTE UTILITIES SYSTEM,
PLATTE RIVER POWER AUTHORITY,
SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT,
TEXAS MUNICIPAL POWER AGENCY and
XCEL ENERGY INC.**

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Dated: November 17, 2000

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**JOINT COMMENTS OF SUBSCRIBING COAL SHIPPERS:
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TEXAS MUNICIPAL POWER AGENCY and
XCEL ENERGY INC.**

## PREFACE AND SUMMARY

Subscribing Coal Shippers ("Coal Shippers") present these comments in response to the Surface Transportation Board's ("STB" or "Board") Notice of Proposed Rulemaking ("NPR") served in this docket on October 3, 2000. Coal Shippers represent a broad cross-section of utility coal shippers, including investor-owned, municipally owned and rural electric cooperative power providers.

Coal Shippers were very disappointed with the Board's NPR. Coal Shippers expected the Board to follow through with its stated objective of making "fundamental changes" in its merger rules, particularly with the spectre of a national rail duopoly overshadowing this proceeding. Rather than making "fundamental changes" the STB has proposed various opaque linguistic changes in its current merger rules (e.g., future mergers must "enhance competition"), leaving the STB, carriers, and other parties to flesh out the details (whatever they might be) in the next major rail merger case.

Coal Shippers are aware of the STB's pronouncement that it has "raised the bar" for approval of the next round of major rail mergers. However, as discussed below, the Board's proposed new standards are so elastic that no one will really know whether the "bar" has been raised and if it has, by how much, until the rules are applied in an individual case. Manifestly, there is no certainty that the "bar" has been raised to address competitive and service concerns previously raised by Coal Shippers.

Coal Shippers submit that the "bar" can only be truly raised if the STB includes in its new merger rules specific conditions that will require merging carriers to open up their systems to increased competition via the access, bottleneck and paper barrier relief conditions previously submitted by Coal Shippers. Similarly, "service assurance" plans can provide

meaningful relief to shippers only if the Board requires merging carriers to reimburse shippers for merger-related service failure costs resulting from failure to meet such plans. For this reason, Coal Shippers again request the STB to adopt their previously submitted service failure and regulatory cost conditions.

## I.

## IDENTITY AND INTEREST

Coal Shippers consist of three national associations and eight individual power providers who purchase and pay for the rail transportation of coal used as an electric generation fuel source. Because their positions are complementary, and in the interest of economy and avoiding duplication in their comments, these parties have joined together in these Comments. The Coal Shippers are as follows:

Western Coal Traffic League ("WCTL") is a voluntary organization. Its membership consists of utility coal shippers. WCTL members ship in excess of 100 million tons of coal mined west of the Mississippi River. This coal is transported by rail.

American Public Power Association ("APPA") is the national service organization representing the interests of the nation's over 2000 governmentally owned, locally controlled electric utilities, providing electric service to nearly 40

million Americans in 44 states. Many of APPA's members rely directly or indirectly on coal-fueled electric generation.

National Rural Electric Cooperative Association is a national service organization representing more than 900 not-for-profit, consumer-owned private electric systems that provide electric service to 34 million people in 46 states.

Alliant Energy Cooperation is an investor-owned public utility holding company headquartered in Madison, Wisconsin, whose operating subsidiaries provide electric service to more than one million customers in a 54,000 square-mile service territory in Wisconsin, Iowa, Illinois, and Minnesota.

City of Grand Island, Nebraska generates and distributes electricity to 22,000 homes, businesses, and industries in and around the City, through the Grand Island Utilities Department, a financially self-supporting function of the City.

City Utilities of Springfield, Missouri is a municipal utility that is responsible for the generation, transmission, and distribution of electric power and the provision of other utility services for retail customers in and around Springfield, Missouri.

Lafayette Utilities System is a community-owned and operated utility responsible for the generation, transmission, and distribution of electric power and the provision of other

utility services for customers in and around Lafayette, Louisiana.

Platte River Power Authority, a political subdivision and public corporation of the State of Colorado, is a wholesale electric utility provider for the owner cities of Estes Park, Fort Collins, Longmont, and Loveland, Colorado, and for other utilities and businesses in the western United States.

Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona, provides electricity to power users in a 2,900 square-mile service area in Arizona that includes the Phoenix metropolitan area.

Texas Municipal Power Agency is a Texas municipal agency whose business is the generation and transmission of wholesale electric power to the Member Cities of Bryan, Denton, Garland, and Greenville, Texas.

Xcel Energy Inc. ("Xcel"), formerly known as Northern States Power Company, is a publicly-held company that is engaged in the generation, transmission, and distribution of electricity, and other utility and non-utility operations. On March 24, 1999, Northern States Power Company agreed to merge with New Century Energies, Inc. ("NCE"), a publicly-held company. In this merger, which was consummated on August 21, 2000, NCE was merged with and into Northern States Power Company. Immediately upon the

effectiveness of this merger, Northern States Power changed its name to Xcel, and shares of Xcel began trading publicly.

## II

## BACKGROUND

These Comments are the third set of merits filings Coal Shippers have made in this proceeding. Coal Shippers previously submitted extensive Joint Comments on the Board's Advance Notice of Proposed Rulemaking ("ANPR") on May 16, 2000 ("May Comments"), as well as ANPR Reply Comments on June 5, 2000 ("June Reply Comments").

As Coal Shippers explained in their prior comments, and as the Board itself candidly acknowledged earlier this year, the recent round of Board-approved rail mergers has severely hurt the shipping public:

> In the past five years, the railroad industry in the United States underwent several mergers involving the nation's largest railroads, with the result that now only four large railroads remain -- two in the West and two in the East. Unfortunately, with those mergers came severe service disruptions that have cost shippers nationwide hundreds of millions of dollars in lost freight or delayed shipments, and, again unfortunately, many of those problems persist even to this day.
>
> * * *
>
> The well-publicized service crisis that developed shortly after approval of the UP/SP merger cost American business (including both

> railroads and their customers) hundreds of millions of dollars and crippled railroad activities throughout the United States for nearly a year. The subsequent service problems following the Conrail division "threatened to bring parts of rail service in the East to a standstill" and "cost corporate shippers millions [of dollars] in delays." The problems with the BN/SF merger, while less publicized, were also substantial, even though, as pointed out by several shippers and shipper groups, . . . that merger was considered to be largely an "end to end" combination that presumably would not create such difficulties. And even the CN/IC merger, which is not yet fully implemented, and as to which the jury is thus still out . . . , has not left all shippers satisfied.

Brief of Respondent Surface Transportation Board, No. 00-1115, et al., Western Coal Traffic League v. STB (D.C. Cir., filed May 19, 2000), at 4, 10-11 (footnotes omitted) ("BN/CN Moratorium Case").

Not only have prior mergers caused irreparable injury to the shipping public, the Board-approved mergers have led to an industry that is so concentrated that the "next round" of mergers, if approved, will produce a national rail duopoly -- putting control of most American rail freight in the hands of two mega-carriers.

In light of these developments, the Board told the reviewing court in the BN/CN Moratorium Case that "the Board's existing merger policies and procedures -- as reflected in its rules, policies, and precedents -- are inadequate to deal with any new merger proposals, and . . . fundamental changes to federal regulation are required to address any further mergers."

(STB Brief in BN/CW Moratorium Case at 4) (emphasis added).

Shippers participating in this proceeding have proposed fundamental changes in the Board's merger rules. While the details of various shipper-sponsored proposals differ, the shipping community's comments uniformly support proposals of the type forwarded by Coal Shippers in their Opening Comments:

* Shippers uniformly support changes that will increase shippers' competitive options in the form of increased bottleneck and competitive access relief;

* Shippers, joined by short line railroads, uniformly support removing anti-competitive paper barriers that prevent short lines from competing for traffic;

* Shippers uniformly support excluding acquisition premiums and merger congestion costs from costs used in rate cases and in calculating the Rail Cost Adjustment Factors ("RCAF"); and

* Shippers uniformly support requiring merging carriers to reimburse shippers for extra costs resulting from merger-caused service disruptions.

Unfortunately, the STB, in its NPR, has chosen not to adopt any of the "fundamental" policy changes advocated by Coal Shippers, and other shippers, nor has it appeared to study them in any detail. Instead, the Board now backtracks, concluding

that "a fundamental shift in policy is better left to Congress." (NPR at 17)(footnote omitted).

In these Comments, Coal Shippers request that the Board revisit its decision not to include in its proposal any shipper-sponsored, specific pro-competitive merger remedies in its merger rules. If the Board is going to allow the next round of major rail mergers to take place, a national rail duopoly will result. This duopoly will complete the radical restructuring of the rail industry, through mergers, as overseen by the STB and its statutory predecessor, the Interstate Commerce Commission ("ICC"). If the STB is of the opinion (which it appears to be) that it does not need to ask for Congressionally-imposed changes in the law to approve (or disapprove) the creation of a national rail duopoly, surely it does not need Congressional directives (in the form of new laws) to condition any such mergers in the manner proposed by Coal Shippers.

Similarly, Coal Shippers request that the Board change its current proposals concerning potential post-merger service problems to specifically require merging carriers to compensate shippers for post-merger service failure costs incurred by shippers and to specifically require merging carriers to exclude acquisition premiums, and service failure costs, in calculating rail costs for regulatory purposes, including the RCAF calculations.

## III

## COMPETITIVE REMEDIES

The STB generally proposes not to approve any new major rail mergers unless the applicants demonstrate that the merger will "enhance[] competition." (NPR at 12). However, the STB's proposed merger rules prescribe no specific competition-enhancing merger conditions or guidelines. Instead, the Board leaves it up to the merging carriers to incorporate competition-enhancing features into their merger applications.

Coal Shippers submit that the STB's new competition-enhancing standard, no matter how well intentioned, is likely to provide no meaningful relief to captive coal shippers. The rail applicants in all recent major rail merger proceedings have claimed that the mergers will enhance competition and, in some cases, the ICC/STB has agreed. Thus, the new standard, by itself, is of little consequence because it is so opened-ended.[1]

The only way the STB can ensure that competition will be meaningfully enhanced is for the Board to prescribe, in advance, pro-competitive conditions of the type previously advocated the Coal Shippers. Specifically, in their May

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[1] Coal Shippers note that Vice-Chairman Burkes and Commissioner Clyburn appear to share these concerns, with Vice-Chairman Burkes asking for comments on "whether more specific language is required in our final rules [] on enhanced competition protections (NPR at 41) and with Commissioner Clyburn observing that "this first draft may be relatively broad...." NPR at 41.

Comments, Coal Shippers proposed the following conditions: (1) access relief; (2) bottleneck relief; and (3) paper barrier relief. Coal Shippers again request the Board to adopt these conditions.

A. Access Relief Condition

Coal Shippers request the Board to amend its merger rules by adopting the following access relief rule:

> The Board shall impose as a condition on any major rail consolidation transaction the following access relief:
>
> (a) Following the Board's approval of a major rail consolidation transaction, any person, including an affected shipper, may request the consolidated carrier(s) to allow a second carrier to use its or their facilities to provide competitive rail service. The carrier shall have ninety (90) days to respond to the request. If the carrier denies the request, the person may seek relief from the Board as provided in subsection (b) below.
>
> (b) Upon request of any person, including an affected shipper, and subject to the requirements of subsection (a), the Board shall require railroad facilities owned by the involved rail carrier to be used by another rail carrier if the Board finds that use will not substantially impair the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business. The Board shall establish compensation for the use of the facilities on a usage basis based upon a sharing of the total costs incurred. Total costs shall include roadway maintenance expenses, dispatching expenses, and return on and of net book investment on road property. The rail carriers are responsible for establishing the conditions for use of the facilities,

except compensation. However, if the rail carriers cannot agree, the Board shall establish conditions for use of the facilities. The compensation shall be adequately secured before a rail carrier may begin to use the facilities of another rail carrier under this section.

(c) A rail carrier whose railroad facilities are required to be used by another rail carrier under this section is entitled to recover damages from the other rail carrier for injuries sustained as the result of compliance with the requirement or for compensation for the use, or both as appropriate, in a civil action, if it is not satisfied with the conditions for use of the facilities or if the amount of the compensation is not paid promptly.

(d) The Board shall complete any proceeding under subsection (b) within 180 days after the filing of the request for relief.

The proposed access rule is intended to promote effective rail competition by giving shippers the opportunity to obtain competitive access relief from the consolidated carrier in those instances where access relief is physically practicable. The rule is also intended to promote shipper/carrier negotiated access solutions, subject to STB intervention in those instances where the parties are unable to work out the terms of the relief via negotiations.[2]

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[2] Coal Shippers note that several non-shipper parties, including the United States Department of Transportation, urged the Board to include specific access relief remedies in the Board's new merger rules. See NPR at 198.

B. Bottleneck Relief Condition

The bottleneck problem is an increasingly significant one given the number of major rail mergers that have already occurred. Rail mergers exacerbate bottleneck problems by, e.g., converting a bottleneck involving a separate destination carrier that connects with two competing origin carriers into a situation where the bottleneck destination carrier also serves the origin.

In its ANPR the Board summarized proposals by various parties during its Ex Parte No. 582 hearing to deal with these problems, principally by requiring merger applicants to offer contracts for the competitive portion of joint-line routes when the joint-line partner has a bottleneck segment and requiring merger applicants to provide a new through route for bottleneck segments if the shipper has entered into a contract with another carrier for the competitive segment. ANPR at 7-8.

As explained by Coal Shippers and their individual members, these limited proposals do not go nearly far enough to address the anticompetitive impacts caused by rail bottlenecks, particularly the "contract first" problem.[3] Accordingly, Coal Shippers proposed a more comprehensive condition requiring merging carriers to offer bottleneck rates on request in all situations.

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[3] See the separate ANPR Comments of Alliant Energy Corporation (one of the Coal Shippers) at 8-11.

In its NPR, the STB does not propose either the limited ANPR bottleneck proposals or the broader bottleneck proposals submitted by Coal Shippers. Coal Shippers again request the Board to amend its merger rules by adopting the following bottleneck relief rule:

> The Board shall impose as a condition on any major rail consolidation transaction the following bottleneck rate relief:
>
> (a) Following the Board's approval of a major rail consolidation transaction, upon the request of a shipper, the consolidated rail carrier(s) shall establish a rate for transportation and provide service requested by the shipper between any two points on the system of that carrier where traffic originates, terminates, or may reasonably be interchanged. A carrier shall establish a rate and provide service upon such request without regard to: (i) whether the rate established is for only part of a movement between an origin and a destination; (ii) whether the shipper has made arrangements for transportation for any other part of that movement; or (iii) whether the shipper currently has a contract with any rail carrier for part or all of its transportation needs over the route of movement; provided, however, that if such a contract exists, the rate established by the carrier shall not apply to transportation covered by the contract.
>
> (b) A shipper may challenge the reasonableness of any rate established by a consolidated rail carrier in accordance with subsection (a). The Board shall determine the reasonableness of the rate so challenged without regard to: (i) whether the rate established is for only part of a movement between an origin and a destination; (ii) whether the shipper has made arrangements for transportation for any other part of that

movement; or (iii) whether the shipper currently has a contract with a rail carrier for any part of the rail traffic at issue, provided that the rate prescribed by the Board shall not apply to transportation covered by such a contract.

The proposed bottleneck relief rule is intended to promote competition by requiring consolidated carriers to provide transportation rates over bottleneck route segments. If a rate so provided is unreasonably high, a shipper can seek maximum rate relief from the STB.

C. Paper Barrier Relief Condition

Coal Shippers request the Board to amend its merger rules by adopting the following paper barrier relief rule:

> The Board shall impose as a condition on any major rail consolidation transaction the following paper barrier relief:
>
> (a) "Paper barriers," as used in this section, refer to the terms in agreements between (i) Class I railroads and (ii) Class II or Class III railroads ("shortlines") or non-carriers which impair or penalize the shortline's freedom to interchange traffic with carriers with which the shortline can physically connect.
>
> (b) Following the Board's approval of a major rail consolidation transaction, any person (including an affected shipper) may request the consolidated carrier to remove one or more paper barriers. The carrier shall respond within thirty (30) days after receipt of the request. If the carrier does not grant the request, a person may institute proceedings at the Board.
>
> (c) Upon receipt of a request, and subject to the provisions of subsection (b),

the Board shall direct the consolidated carrier to remove a paper barrier unless the carrier can demonstrate that retention of the paper barrier is in the public interest. In making a public interest finding, the Board will be guided by the principles set forth in subsection (d).

(d) Paper barriers to interchange are inherently anti-competitive, and are unreasonable unless they are necessary to the achievement of a public benefit that outweighs the harm they cause to competition, and then only if they are no broader or more restrictive than necessary to achieve that benefit. There is a rebuttable presumption that a paper barrier is unreasonable insofar as it (i) lasts longer than five (5) years from the date of the agreement containing the paper barrier, or (ii) includes any financial penalty on a shortline that is triggered by the interchange of traffic with another carrier, or (iii) includes credits for traffic interchanged with a carrier against a rental or sale price that reflects a return of more than the railroad industry's cost of capital on the fair market value of the properties sold or leased. For purposes of this section, "fair market value" shall be computed without considering the revenues earned by the carrier for handling traffic originating or terminating on those properties over other parts of its system.

The proposed paper barrier rule is intended to eliminate restrictions that prevent shortline railroads from providing competitive interchanges with major rail carriers. The rule allows shippers and carriers to first negotiate removal of unreasonable paper barriers, subject to Board resolution of disputes the parties are unable to successfully negotiate.

## IV

## SERVICE FAILURE REMEDIES

In its May Comments, Coal Shippers asked the STB to adopt the following service condition:

> The Board will impose as a condition on any major rail consolidation transaction a requirement that the consolidated carrier(s) make any shipper financially whole for any injuries the shipper incurs as a result of post-consolidation service problems. The shipper may submit a claim to a carrier for compensation under this regulation at any time following the Board's approval of the consolidation. The consolidated carrier shall pay the claim within fourteen (14) days of its receipt of the shipper's claim; provided, however, if the carrier disputes the claim, it shall so notify the claimant in writing and explain therein, with specificity, the basis for its dispute, within fourteen (14) days of its receipt of the shipper's claim. If the consolidated carrier so disputes a shipper's claim, the shipper may institute a proceeding at the Board to obtain payment. The Board shall complete any proceeding under this rule within one hundred eighty (180) days after the filing of the request for relief. A consolidated carrier may not raise as a defense that its liability to any shipper is limited by the terms of any contract or other arrangement with the shipper. This section shall apply to all major consolidation transactions approved on or after January 1, 1996.

Many other shippers proposed similar forms of service conditions, which call for merging railroads to pay shippers for losses that they incur as a result of post-merger service problems.

Significantly, shippers are joined on this issue by the United States Department of Agriculture, which concluded:

> The Board should require that railroads involved in major railroad consolidations indemnify shippers and other railroads (during the merger implementation period) for costs incurred due to merger-related service interruptions . . . .

U.S. Department of Agriculture ANPR Comments at 24. The United States Department of Transportation ("DOT") also recommended that shippers obtain "recovery of losses" they incur when railroads fail to live up to service guarantees. DOT ANPR Comments at 9.[4]

The American Short Line and Regional Railroad Association ("Short Line Association") urges similar relief for its membership, asking the STB to adopt the principle that:

> Class II and class III railroads that connect to the consolidated carrier have the right to compensation by the consolidated carrier for service failures related to the consolidation.

Short Line Association ANPR Comments at 7. Even the Union Pacific Railroad Company ("UP") acknowledged that in certain instances shippers should be able to obtain a Board-ordered damage recovery. See UP ANPR Comments at 6.

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[4] DOT advocated that such guarantees be included in "contractual agreements" between shippers and merging carriers. Id. The problem with this approach is that it assumes the merging carriers will voluntarily enter into such contract arrangements, a result that is most unlikely given the industry's articulated position in this proceeding.

Despite this overwhelming support for a meaningful service remedy, the STB has not proposed such a remedy in the NPR. Instead, the NPR calls upon applicant railroads to devise for Board review a "service assurance plan." (NPR at 15) As Coal Shippers have previously informed the Board, we do not object to the Board's receipt of additional evidence on service issues. However, if the STB has learned anything in recent mergers -- all of which contained detailed assurances from the merging carriers that the mergers would not cause service problems -- it should be that despite "assurances," detailed service integration plans, etc., mergers have caused major service problems.

The STB also should be aware that when one of the major railroads experiences severe service problems, marketplace solutions (e.g., the substitution of a second rail carrier) are extremely limited. For example, during the UP/SP service meltdown, other carriers (e.g., BNSF) lacked the resources to provide substitute service for western coal shippers and, where resources were available, charged UP customers very high rates to provide substitute service. The unavoidable result has been "severe service disruptions that have cost shippers nationwide hundreds of millions of dollars ...." STB Brief in BN/CN Moratorium Case, supra.

Coal Shippers request that the STB require as part of any "service assurance plan" the service failure monetary damage

remedy proposed in our May Comments. With such a remedy in place, shippers will have a meaningful "assurance" that they will be directly reimbursed for increased costs they incur as a result of merging carriers service failures.

## V.

## REGULATORY COST REMEDIES

Coal Shippers previously proposed the following regulatory cost relief rule:

> The Board shall impose as a condition on any major rail consolidation transaction the following regulatory cost relief:
>
> (a) In any proceeding at the Board involving development or use of a consolidated carrier's costs for providing rail transportation service, costs associated with rail service problems, or purchase premiums paid for a carrier's assets, shall be excluded from the carrier's cost of service under the Board's General Purpose Costing Systems. "Purchase premium," as used in this paragraph, refers to the difference between the net book value and the purchase price of the involved rail properties. This section shall apply to all major consolidation transactions approved on or after January 1, 1996.

May Comments at 24.

Coal Shippers' proposed regulatory cost relief rule is intended to prevent a consolidated carrier from passing through increased costs in the form of service disruption costs, and purchase premiums, to shippers via the inclusion of these costs

in the Board's General Purpose Costing Systems (e.g., the Uniform Railroad Costing System) and in its calculation of the RCAF. Most shipper commentors have supported the principles codified in the Coal Shippers' proposals.[5]

Coal Shippers submit it is fundamentally unfair to make rail customers pay for acquisition premiums and service congestion costs. Indeed, we are unaware of any other federal agency that takes this position. For example, FERC has consistently rejected pass through of acquisition premium costs to utility customers. See, e.g., Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act; Policy Statement, 61 Fed. Reg. 68,595, 68,604 (Dec. 30, 1996) (FERC "historically has not permitted rate recovery of acquisition premiums").

In its NPR, the STB does not address Coal Shippers' proposed regulatory cost condition. This is particularly disappointing to Coal Shippers in light of Vice-Chairman Burkes' prior statements indicating the STB would revisit these issues. See Western Coal Traffic League v. Union Pacific R.R., Finance Docket No. 33726 (Decision served May 16, 2000) at 11-13.

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[5] See, e.g., ANPR Comments Submitted by The National Industrial Transportation League at 18; ANPR Comments of U.S. Clay Producers Traffic Ass'n, Inc. at 2; ANPR Comments of Edison Electric Institute at 6.

Coal Shippers recognize that prior Board decisions have refused to adopt the principles set forth in the above-proposed regulatory cost condition. The STB's current treatment of the acquisition premium appears to have been influenced by its assumption that such premiums would be offset by cost reductions produced by "merger synergies." CSX Corp. -- Control and Operating Leases/Agreements -- Conrail, Inc., Finance Docket No. 33388 (Decision No. 89 served July 23, 1998) at 64. However, as the Board has repeatedly recognized in this proceeding, such "synergies" have not materialized to date. Accordingly, Coal Shippers again request the STB to adopt our proposed regulatory cost condition.

**CONCLUSION**

Coal Shippers request the Board to modify its proposed rules in the manner set forth above and in our prior comments to the Board.

Respectfully submitted,

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Dated: November 17, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of November, 2000, I have served a copy of the foregoing Joint Comments of Subscribing Coal Shippers on all persons designated as a Party of Record in this proceeding by postage pre-paid, first-class United States mail.

John H. LeSeur
An Attorney for Subscribing
Coal Shippers